

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAYMOND L. FITZGERALD,	§
	§ No. 363, 2006
Class Member Below-	§
Appellant,	§
	§ Court Below-Court of Chancery
v.	§ of the State of Delaware
	§ in and for New Castle County
VISHAY INTERTECHNOLOGY	§ C.A. No. 1143-N
INC.,	§
	§
Defendant Below-	§
Appellee.	§

Submitted: December 19, 2006

Decided: January 24, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 24th day of January 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) Appellant Raymond L. Fitzgerald has filed an appeal from the Court of Chancery's June 13, 2006 order, which enjoins a class of plaintiff shareholders from prosecuting an action pending in the Superior Court of California¹ the claims in which were released in a Delaware class action by

¹ *Proctor v. Vishay Intertechnology, Inc.*, Superior Court of California, County of Santa Clara, Case No. 1-04-CV-018977.

the Court of Chancery's October 25, 2005 order and final judgment.² Because Fitzgerald was not a party to the proceeding below, we dismiss this appeal.

(2) In March 2005, several class action complaints were filed in the Court of Chancery challenging an anticipated tender offer by defendant-appellee Vishay Intertechnology Inc. for the publicly-held shares of Siliconix Inc., a subsidiary. Both Vishay and Siliconix were, and are, Delaware corporations. Following commencement of the tender offer by Vishay, the plaintiffs filed a consolidated amended complaint and moved to enjoin the transaction. In April 2005, Vishay reached a tentative settlement with the plaintiffs and, in May 2005, effected a short-form merger between Siliconix and a wholly-owned subsidiary of Vishay.

(3) After notification to the plaintiff class of the proposed settlement on September 13, 2005,³ and a hearing on October 25, 2005, the Court of Chancery approved the settlement and entered an order and final judgment. The final judgment dismissed the action with prejudice and released all claims related to the amended complaint, the tender offer and the merger. Neither Fitzgerald nor any other shareholder objected to the

² *In re Siliconix Inc. S'holders Litig.*, Del. Ch., C.A. No. 1143-N, Strine, V.C. (Oct. 25, 2005) (Order and final judgment).

³ The Notice provided that "[a]ny person who fails to object ... shall be deemed to have waived the right to object ... and shall be forever barred from raising such objection in this or any other action or proceeding unless the Court orders otherwise."

proposed settlement. Despite the entry of the judgment, certain shareholders of Siliconix continued to prosecute an earlier-filed action in the Superior Court of California, County of Santa Clara, which encompassed the same claims that had been released in the settlement of the Delaware action.

(4) In May 2006, Vishay moved in the Court of Chancery for an order enjoining the continued prosecution in California of claims that had been released in Delaware. Despite receiving notice of the motion, none of the parties in the Delaware and California cases opposed Vishay's application. Fitzgerald, as a member of the class subject to the October 25, 2005 order and final judgment, filed an objection to Vishay's motion but did not move to intervene. Nor did he seek relief from the terms of the September 13, 2005 order of the Court of Chancery forever barring his objection to the settlement and release. In June 2006, the Court of Chancery granted Vishay's motion for an injunction, noting that "none of the parties in the pending California litigation has bothered to appear, despite adequate notice of their opportunity to do so." The Court of Chancery specifically held that Fitzgerald's arguments were "untimely" because "[a]t the appropriate time to object to the final judgment and release, Mr. Fitzgerald was silent and raised no objection" and "never intervened in the case in any

proper manner and has yet to do so.” In July 2006, Fitzgerald filed a notice of appeal in this Court.

(5) In his appeal, Fitzgerald claims that: a) he has standing to prosecute the appeal despite his status as a non-party; b) the Court of Chancery exceeded its authority by issuing the injunction, because the California action predated the Delaware action and arises from facts different from those underlying the Delaware action; and c) the injunction violates principles of comity. Vishay denies each of these claims.

(6) The record reflects that Fitzgerald was not a named plaintiff either in the Delaware action or in the California action, did not seek to intervene in either case, and is not a party in any litigation affected by the Court of Chancery’s order and final judgment. Fitzgerald argues that he should be permitted to appeal the Court of Chancery’s final judgment on the sole ground that he is a member of the plaintiff class affected by the decision below. He makes this argument despite his lack of objection to the settlement.⁴

⁴ See *Devlin v. Scardelletti*, 536 U.S. 1 (2002) (unnamed class member could appeal the approval of a class action settlement even though he had not intervened because he had objected to settlement.).

(7) In Delaware, a nonparty to an action generally has no standing to take an appeal to the Delaware Supreme Court.⁵ Moreover, the fact that a nonparty has an interest in the outcome of the litigation, or has participated in the proceedings below, is insufficient to confer standing upon him for purposes of an appeal.⁶ There are no circumstances in this case that justify departing from this settled principle of Delaware law. Therefore, this appeal from the judgment of the Court of Chancery should be dismissed.

NOW, THEREFORE, IT IS ORDERED that this appeal is DISMISSED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁵ *Bryan v. Doar*, Del. Supr., No. 469, 2006, Holland, J. (Nov. 6, 2006) (citing *Townsend v. Griffith*, 570 A.2d 1157, 1158 (Del. 1990)).

⁶ *Id.*